

professional guidelines in evaluating an individual's conduct.

(b) *Sanctions.* If the Board expressly finds that a protest or a portion of a protest is frivolous or has been brought or pursued in bad faith; or any person has willfully abused the Board's process during the course of a protest, the Board may impose appropriate sanctions. In any type of case, when a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions include:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case in accordance with the contention of the party submitting discovery requests;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony;

(5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(6) Dismissing the case or any part thereof;

(7) Enforcing the protective order and disciplining individuals subject to such order for violation thereof, including disqualifying a party's representative, attorney, or expert/consultant from further participation in the case; or

(8) Imposing such other sanctions as the Board deems appropriate.

(c) *Denial of access to protected material for prior violations of protective orders.* The Board may in its discretion deny access to protected material to any person found to have previously violated the Board's protective order.

(d) *Disciplinary proceedings.* (1) In addition to the above procedures, the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any board order or direction or standard of

conduct applicable to such individual where the violation seriously affects the integrity of the Board's processes or proceedings. Sanctions may be public or private, and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant.

(2) The Board in its discretion may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after affording such individual notice and an opportunity to be heard, a majority of the members of the full Board determines such a sanction is warranted.

[58 FR 69250, Dec. 30, 1993, as amended at 60 FR 17027, Apr. 4, 1995]

6101.19 Hearings: scheduling; notice; unexcused absences; suspension decision [Rule 19].

(a) *Scheduling of hearings*—(1) *In general.* Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board. In scheduling hearings, the Board will consider the requirements of the rules in this part, the need for orderly management of the Board's caseload, and the stated desires of the parties as expressed in their elections filed pursuant to 6101.9 or otherwise. The time or place for hearing may be changed by the Board at any time.

(2) *Protest suspension hearing.* The Board will, upon timely request by an interested party, hold a hearing to determine whether the Board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the Board can decide the protest. Such a request is timely if the underlying protest is filed by the later of (i) the tenth calendar day after the date of contract award; or (ii) the fifth calendar day after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required. The Board will hold the requested hearing within 5 working days after the date of the filing of the protest or, in the case of a request for debriefing under the

GSA Board of Contract Appeals

6101.20

provisions of 10 U.S.C. 2305(b)(5), or 41 U.S.C. 253b, within 5 working days after the later of the date of the filing of the protest or the date of the debriefing.

(3) *Protest hearing on merits.* Any hearing on the merits of a protest will commence no later than 35 calendar days after the filing of the protest.

(b) *Notice of hearing.* Notice of hearing will be by written order of the Board, except that it may be oral for a suspension hearing held under paragraph (a)(2) of this section. Notice of changes in the hearing schedule will also be by written order when practicable but may be oral in exigent circumstances. Except as the Board may otherwise order, each party that plans to attend the hearing in an appeal shall, within 10 working days of receipt of (1) a written notice of hearing or (2) any notice of a change in hearing schedule stating that an acknowledgment is required, notify the Board in writing that it will attend the hearing. Acknowledgement of a notice of hearing in a protest may be written or oral and shall be given within such time as the notice prescribes.

(c) *Unexcused absence from hearing.* In the event of the unexcused absence of a party from a hearing, the hearing will proceed, and the absent party will be deemed to have elected to submit its case on the record pursuant to 6101.11.

(d) *Suspension decision.* The Board shall suspend the respondent's procurement authority, or a delegation thereof, pending a decision on the merits of the protest, unless the respondent establishes at hearing that:

(1) Absent suspension, contract award, if not already made, is likely to occur within 30 calendar days; and

(2) Urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board.

If a contract award has not been made, a suspension shall not preclude the Federal agency concerned from continuing the procurement process up to but not including award of the contract unless the Board determines that such action is not in the best interests of the United States. The decision regarding suspension will be by order of the panel chairman and may be oral, to be

reduced to writing as soon as practicable.

[58 FR 69250, Dec. 30, 1993, as amended at 60 FR 17027, Apr. 4, 1995]

6101.20 Subpoenas [Rule 20].

(a) *Voluntary cooperation in lieu of subpoena.* Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by another party, without issuance of a subpoena; and

(2) Secure voluntary attendance of third-party witnesses and production of evidence by third parties, when practicable, without issuance of a subpoena.

(b) *General.* Upon the written request of any party filed with the Office of the Clerk of the Board, or on the initiative of a judge, a subpoena may be issued that commands the person to whom it is directed to:

(1) Attend and give testimony at a deposition in a city or county where that person resides or is employed or transacts business in person or at another location convenient to that person that is specifically determined by the Board;

(2) Attend and give testimony at a hearing; and

(3) Produce the books, papers, documents, and other tangible things designated in the subpoena.

(c) *Request for subpoena.* A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any documentary evidence sought. A request for a subpoena shall be filed at least 5 working days in a protest, or 15 calendar days in any other kind of case, before the testimony of a witness or documentary evidence is to be provided. The Board may, in its discretion, honor requests for subpoenas not made within these time limitations.

(d) *Form; issuance.* (1) Every subpoena shall be in the form specified in the appendix to this part. Unless a party has the approval of a judge to submit a subpoena in blank (in whole or in part), a party shall submit to the judge a completed subpoena (save the "Return on Service" portion). In issuing a subpoena to a requesting party, the judge shall sign the subpoena. The party to